A RETRACTION.

IN the last volume of this magazine[1] I undertook to review a legal theory thus enounced by Prof. William A. Keener in a recent treatise: "No one shall be allowed to enrich himself unjustly at the expense of another."[2] Among the criticisms which I urged is one which, if true, is very vital, to the effect that the principle as defined contains within itself a logical fallacy, and here follows the substance of my argument: —

The proposition is exactly reproduced in meaning if it be cast into this form: The unjust enrichment of one at the expense of another is illegal. Now "it is generally conceded, and it is undoubtedly true, that the forum of the law is not of equal jurisdiction with the forum of the conscience, and that some acts may be ethically unjust which are yet permissible in law. Unjust acts may be therefore unjust and legal, or unjust and illegal. This difference may be indicated in our proposition, which will then take on either of these two forms: —

"1. The unjust and *legal* enrichment of one at the expense of another is illegal.

"2. The unjust and *illegal* enrichment of one at the expense of another is illegal."[3] Of these two propositions, the first is false in that it is a contradiction in terms; and the second is true, but useless in that it is a mere identity in terms.

Perhaps some rash opponent, on a sunny day when his courage is high, may answer, "True it is that some unjust acts may be legal and some illegal, but the only conclusion, with reference to the doctrine of unjust enrichment, that can rightly be drawn from the admission is that, so far as such unjust acts are acts of unjust enrichment, the doctrine is not true. It is an incorrect conclusion that the doctrine is itself logically defective. The difficulty is that you are not justified in the procedure which you have adopted, dividing, that is to say, acts of unjust enrichment into two classes, *and then characterizing them in the subject by an adjective which Professor Keener had already reserved for, and retained in, the predicate.* There can be no identity and no contradiction in one sentence unless the same adjective appears on both sides of the copula, with or without a negative attached. Such was not the case in Professor

[1] 10 HARVARD LAW REVIEW, 209, 479.
[2] Keener on Quasi-Contracts, 16.
[3] 10 HARVARD LAW REVIEW, 223.

Keener's original proposition, and such is not the case in your two derivative propositions, save and except as you have yourself made it so without his consent, so that the essence of what you did is to put words into his mouth which he did not use. Any proposition may be reduced to absurdity by that process. So simple a sentence as this, *All men must die*, must be thus converted into *All mortal men must die*, and so converted becomes a useless proposition, of course; but the process of conversion is itself illicit and in no wise affects the validity, logical or otherwise, of the original sentence. Consequently you were really guilty of the serious offence of first setting up a straw man, then knocking him down, and finally proclaiming that you thereby conquered a valiant and substantial foe." [1]

Alas, the criticism is only too true and too conclusive! It destroys my argument, and demolishes the whole superstructure thereon erected. I did set up a man of straw, and my apparent victory is mere emptiness. Whether the defeat of the real foe can be ultimately accomplished or not is another question, not now material. Suffice it for the present that my arguments have not yet brought it about.

In a realm where only truth is valued, — and the pages of this REVIEW are such a realm, — no mercy should be granted to error, especially when it takes the form of a criticism so fundamental, so elaborately urged, and so erroneous as was mine. A false argument leaves only one course open to him who would be a fair-minded critic, and that course I gladly follow. I admit my error, I retract, I tender a sincere apology to Professor Keener and to all others concerned, I resolve that it shall never with my consent occur again, and I make the retraction and apology as nearly as may be as public as the error. If anything more can be rightfully demanded, I trust to have grace to fulfil the obligation.

Everett V. Abbott.

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1 This criticism is by no means, either in substance or in form, the criticism advanced by Mr. Hand in a recent number of the REVIEW. See his article, Restitution or Unjust Enrichment, Vol. XI. p. 249. Mr. Hand's article proceeds throughout upon certain fundamental misconceptions of my meaning, both in what I have to say about the doctrine of unjust enrichment and in what I have to say in the establishment and defence of the theory of restitution. To only one of the points which he makes can I allow any validity, and that by its own terms does not involve any matter of substance. I am informed, however, that, in the interest of the REVIEW, the editors feel it their duty to close that discussion for the present, and I may not now amplify my defence.